

2. If so, did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

On April 30, 2001, claimant injured her back working for respondent while picking up a box of apples. The injury occurred while claimant was performing her assigned job duties. The Board concludes claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

Immediately after the incident, claimant told her supervisor, Mary Lou Shipley, that she had hurt her back lifting the apples. That notice was timely as required by K.S.A. 44-520, which provides:

... proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. . . .

This claim hinges upon claimant's credibility. The Judge found claimant to be a very credible witness. At this juncture of the claim the Board gives some deference to the Judge's impression of claimant's credibility and agrees. Claimant's version of the accident is supported by her personal physician's May 7, 2001 medical notes, in which the doctor states that claimant had injured her back at work and that claimant had notified her supervisor. Those notes read, in part:

Back pain - hurt 4/30 @ work - p/u case of food - told boss - was not going to pursue W/C. Told pt. health ins. won't cover work inj. . . .

When considering the entire record compiled to date, the Board concludes claimant injured her back working for respondent and provided respondent with timely notice of the accidental injury. The November 13, 2001 Order should be affirmed.

WHEREFORE, the Board affirms the November 13, 2001 preliminary hearing Order entered by Judge Benedict.

IT IS SO ORDERED.

Dated this ____ day of March 2002.

BOARD MEMBER

c: John M. Ostrowski, Attorney for Claimant
Katharine M. Collins, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director